

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALLEN ROY BRONTKOWSKI,

Defendant-Appellant.

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UNPUBLISHED

March 25, 2014

No. 313002

Macomb Circuit Court

LC No. 2011-003009-FH

Before: BECKERING, P.J., and STEPHENS and RIORDAN, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of extortion, MCL 750.213, four counts of unlawful imprisonment, MCL 750.349b, assault, MCL 750.81, and possession of a firearm during a felony (felony firearm), MCL 750.227b. He was sentenced to serve 57 months to 20 years for the extortion conviction, 57 months to 15 years for the unlawful imprisonment conviction, 93 days for assault, and two years for felony firearm. We affirm.

Defendant, his co-defendant Vincent Bosca, and another man who testified against them were accused of duct-taping and assaulting four teenage boys, who they claimed broke into Bosca's home to steal his medical marijuana.

On appeal, defendant argues that he was denied due process and his right to confront witnesses because the prosecutor did not reveal the complete plea agreement he had with the co-conspirator witness, specifically that the witness could receive a more lenient sentence than his official agreement. The trial court held that the jury could be informed that the witness pleaded guilty and his sentence agreement with the prosecution was for 66 months. The court provided the jury with that information, and defense counsel also referenced the 66 months in his closing arguments. The witness instead received the mandatory two years for felony firearm and probation.

MCR 6.201(B)(5) requires the prosecuting attorney, upon request, to provide each defendant with "any plea agreement, grant of immunity, or other agreement for testimony." Upon request, the prosecutor and trial court must disclose a granting of immunity or other leniency or a reasonable expectation of leniency. *People v Standifer*, 425 Mich 543, 552; 390 NW2d 632 (1986); *People v Atkins*, 397 Mich 163, 173; 243 NW2d 292 (1976). The jury is entitled to know about any understanding or agreement regarding future prosecution of a witness because that information is relevant to credibility. *Giglio v United States*, 405 US 150, 154-155;

92 S Ct 763; 31 L Ed 2d 104 (1972). This rule is also based on the prosecutor's general duty under *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963), to provide evidence favorable to the defendant. *People v Lester*, 232 Mich App 262, 280-281; 591 NW2d 267 (1998). A conviction must be reversed if the prosecutor possessed and suppressed favorable evidence the defense could not obtain the evidence with reasonable diligence, and there was a reasonable probability of a different outcome. *Id.*

However, future possibilities need not be disclosed absent a reasonable expectation by the witness. *Atkins*, 397 Mich at 173. The prosecutor and trial court denied that there was any secret deal for a more lenient sentence, and the court explained that it imposed a more lenient sentence only after listening to the evidence. Defendant was unable to establish that there was a more lenient agreement or that the witness reasonably expected to receive a more lenient sentence. Further, there was no reasonable probability of a different outcome had the jury been informed of any possible leniency because of the testimony of other witnesses. The co-conspirator witness attributed less fault to defendant than any other eyewitness, and defendant's and Bosca's defense attorneys both used his testimony to support their closing arguments. See *People v McMullan*, 284 Mich App 149, 157; 771 NW2d 810 (2009), *aff'd* in part 488 Mich 922; 789 NW2d 857 (2010), quoting *Lester*, 232 Mich App at 282. Defendant's rights to due process and a fair trial were not denied.

Defendant also argues that his trial counsel was constitutionally ineffective for failing to cross-examine the co-conspirator witness about his deal. We must determine whether the attorney's performance fell below an objective level of reasonableness and defendant was denied a fair hearing as a result. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000).

Although defendant's attorney neglected to ask the witness for testimony regarding the deal, he provided that information in his closing argument and the trial court informed the jury as well. Defense counsel could not have cross-examined the witness about a more lenient deal because he had no evidence that such a deal existed. Defense counsel chose to use the 66-month minimum sentence to support his argument that the potential consequences for his client were severe. Although the trial court instructed the jury that it could use the evidence only as it reflected on the witness's credibility, the attorney managed to inform the jury of the potential impact on defendant nonetheless.

Defense counsel also highlighted the portions of the witness's testimony that supported his client, rather than attempting to discredit the witness. This strategy was reasonable because the testimony was less harmful to defendant than that of other eyewitnesses. A strategy is not ineffective merely because it was not completely successful. *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996). The attorney's performance did not fall below an objective level of reasonableness, nor was there a reasonably probability of a more favorable

outcome for defendant had his counsel treated this witness differently. See *Toma*, 462 Mich at 302; *People v Johnson*, 451 Mich 115, 124; 545 NW2d 637 (1996).

Affirmed.

/s/ Jane M. Beckering  
/s/ Cynthia Diane Stephens  
/s/ Michael J. Riordan